

AMENDED IN ASSEMBLY JUNE 20, 2011

AMENDED IN SENATE MAY 19, 2011

AMENDED IN SENATE MAY 17, 2011

AMENDED IN SENATE APRIL 26, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE APRIL 7, 2011

AMENDED IN SENATE MARCH 30, 2011

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**SENATE BILL**

**No. 449**

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**Introduced by Senator Pavley**

February 16, 2011

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An act to add and repeal Article 6 (commencing with Section 12485) of Chapter 5 of Part 2 of Division 3 of Title 2 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

SB 449, as amended, Pavley. Controller: local agency financial review.

Existing law requires certain local agencies to furnish reports to the Controller concerning financial transactions of the local agency, subject to uniform accounting and reporting procedures prescribed by the Controller. The Controller may provide for the investigation of certain local agency finances if a report is not made in the time, form, and manner required or there is reason to believe that a report is false, incomplete, or incorrect.

This bill would additionally authorize the Controller, if the Controller determines that sufficient funds are made available, to conduct a

preliminary review to determine the existence of a local agency financial problem, and perform an audit upon completion of that review, subject to specified criteria.

The bill would require the Controller, if the ~~controller~~ *Controller* determines that sufficient funds are made available, to convene a local agency financial review committee with a specified membership, and authorize the committee to recommend a financial recovery plan for a local agency requesting assistance. It would require the Controller to report to the Legislature annually on the actions of the committee and the status of all engagements with local agencies pursuant to these provisions.

The bill would specify that its provisions would be repealed on January 1, 2017.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. (a) The Legislature finds all of the following:
- 2 (1) The economic recession has disproportionately affected
- 3 California and, in particular, the local agencies that deliver vital
- 4 services to the public. Many local agencies have been forced to
- 5 take unprecedented steps to avert financial crisis and maintain a
- 6 sound credit rating.
- 7 (2) The State of California has a vital financial interest in the
- 8 solvency of its local agencies. When insolvency occurs at a local
- 9 agency, the municipal credit in the state can be negatively
- 10 impacted, costing the state and local governments millions of
- 11 dollars, making borrowing more difficult, and hindering the state's
- 12 economic recovery.
- 13 (3) The health and welfare of the citizens of the state would be
- 14 adversely affected by the insolvency of local agencies. Therefore,
- 15 the fiscal health of local agencies is vitally necessary to the interests
- 16 of this state in providing necessary governmental services.
- 17 (b) Accordingly, the Legislature declares that it is a valid public
- 18 purpose for the state to assist a local agency in a fiscal emergency
- 19 to avert or manage financial problems as defined in this act, and
- 20 that the authority and powers conferred by this act constitute a
- 21 necessary program and serve a valid public purpose.

1 SEC. 2. Article 6 (commencing with Section 12485) is added  
2 to Chapter 5 of Part 2 of Division 3 of Title 2 of the Government  
3 Code, to read:

4  
5 Article 6. Local Agency Financial Review and Assistance  
6

7 12485. (a) The Controller may conduct a preliminary review  
8 to determine the existence of a local agency financial problem if  
9 the Controller determines that sufficient funds are made available  
10 to conduct the preliminary review and one of the following occurs:

11 (1) (A) The governing body, chief administrative officer, or  
12 chief executive of a local agency requests a preliminary review  
13 under this section. The request shall be in writing and shall identify  
14 the existing fiscal conditions that make the request necessary.

15 (B) If the local agency requests a review, any costs incurred  
16 pursuant to this paragraph shall be borne by the local agency.

17 (2) (A) The Controller receives a written request from a creditor  
18 with an undisputed claim against the local agency that exceeds the  
19 greater of ten thousand dollars (\$10,000) or 1 percent of the annual  
20 general fund budget of the local agency, and that remains unpaid  
21 six months after its due date, provided that no less than 30 days  
22 prior to submitting the request, the creditor notifies the local agency  
23 in writing of his or her intention to submit the request.

24 (B) For purposes of this subdivision, a claim shall be deemed  
25 undisputed unless the local agency has made a determination that  
26 any of the following conditions are present:

27 (i) There is a discrepancy between the invoice or claimed amount  
28 and the provisions of the contract or grant.

29 (ii) There is a discrepancy between the invoice or claimed  
30 amount and either the claimant's actual delivery of property or  
31 services to the local agency or the local agency's acceptance of  
32 that delivery or deliveries.

33 (iii) Additional evidence supporting the validity of the invoice  
34 or claimed amount is required to be provided to the local agency  
35 by the claimant.

36 (iv) The invoice has been improperly executed or needs to be  
37 corrected by the claimant.

38 (v) There is a discrepancy between the refund or other payment  
39 due as calculated by the person to whom the money is owed and  
40 by the local agency.

1 (3) The Controller receives notification from the trustee, actuary,  
2 or at least 10 percent of the beneficiaries of a local agency pension  
3 fund alleging that the local agency has not timely deposited its  
4 minimum obligation payment to the pension fund as required by  
5 law.

6 (4) The Controller receives notification from a trustee, paying  
7 agent, or bondholder of a default in a bond payment, or a violation  
8 of one or more bond covenants, by a local agency.

9 (b) The Controller may conduct a preliminary review to  
10 determine the existence of a local agency financial problem if the  
11 Controller determines that sufficient funds are made available to  
12 conduct the preliminary review and two or more of the following  
13 occur:

14 (1) The Controller receives notification that employees of the  
15 local agency have not been paid and it has been at least seven days  
16 after the scheduled date of payment.

17 (2) The Controller receives notification that the local agency is  
18 delinquent in the distribution of tax revenues as required by law.

19 (3) The Controller receives notification that a local agency has  
20 implemented retirements and layoffs constituting greater than 20  
21 percent of the local agency's workforce, relative to the prior year  
22 budget.

23 (4) The Controller receives notification that a local agency has  
24 reduced its public safety or fire services funding by more than 50  
25 percent, relative to the prior year budget.

26 (c) The Controller may conduct a preliminary review to  
27 determine the existence of a local agency financial problem if the  
28 Controller determines that sufficient funds are made available to  
29 conduct the preliminary review and three or more of the following  
30 occur:

31 (1) The Controller receives notification that the local agency  
32 has a critical cashflow situation, evidenced by a midyear borrowing  
33 not anticipated in the most recently enacted budget.

34 (2) The Controller receives notification that a local agency has  
35 enacted a midyear budget correction exceeding 20 percent of the  
36 enacted budget.

37 (3) The Controller receives notification that a local agency has  
38 had a decline in year-over-year general fund collections of greater  
39 than 15 percent.

1 (4) The Controller receives notification that a local agency has  
2 had deficits in one or more major restricted funds, defined as  
3 providing greater than 10 percent of the local agency's annual total  
4 budget, for a period exceeding a fiscal year.

5 (5) The local agency fails to provide an annual financial report  
6 or audit that conforms with the minimum procedures and standards  
7 of the Controller as required by law.

8 (d) In conducting a preliminary review pursuant to this section,  
9 the Controller shall provide the local agency written notification  
10 of the review, and shall meet with the local agency officials to  
11 receive, discuss, and consider information provided by the local  
12 agency concerning the agency's financial condition.

13 (e) The Controller shall provide written notification to the  
14 Governor and the Legislature within 120 days after beginning a  
15 preliminary review pursuant to this section if the review has  
16 determined that one or more conditions indicative of a serious  
17 financial problem, as described in Section 12486, exist within the  
18 local agency.

19 (f) When conducting a preliminary review, the Controller shall  
20 give priority consideration to preliminary reviews conducted  
21 pursuant to subdivision (a) over subdivisions (b) and (c). The  
22 Controller shall further give priority consideration to preliminary  
23 reviews conducted pursuant to subdivision (b) over subdivision  
24 (c).

25 12486. (a) The Controller may conduct an audit of the local  
26 agency ~~for purposes of determining if the controller~~ *Controller*  
27 determines that sufficient funds are made available to conduct the  
28 preliminary review and one or more of the following conditions  
29 indicative of a serious financial problem have occurred, or are  
30 likely to occur, if remedial action is not taken:

31 (1) A default in the payment of principal or interest upon bonded  
32 indebtedness for which no funds, or insufficient funds, are on hand  
33 and segregated in a special trust fund.

34 (2) Failure for a period of 30 days or more beyond the due date  
35 to transfer one or more of the following to the appropriate agency:

36 (A) Taxes withheld on the income of employees.

37 (B) Taxes collected by the local agency as agent for another  
38 governmental entity or taxing authority.

39 (C) Any contribution required by a pension, retirement, or  
40 benefit plan.

1 (3) Failure for a period of 30 days or more to pay wages and  
2 salaries or other compensation or benefits owed to local agency  
3 employees or retirees.

4 (4) The total amount of accounts payable for the current fiscal  
5 year, as determined by the financial records of the local agency,  
6 is in excess of 10 percent of the total expenditures of the local  
7 agency in that fiscal year.

8 (5) Failure to eliminate an existing deficit in any fund of the  
9 local agency within the two-year period preceding the end of the  
10 local agency's fiscal year for which a preliminary review was  
11 conducted pursuant to Section 12485.

12 (6) Projection of a deficit in the general fund of the local agency  
13 for the current fiscal year in excess of 10 percent of the budgeted  
14 revenues for the general fund.

15 (b) (1) The governing body, chief administrative officer, or  
16 chief executive of a local agency may request an audit under this  
17 section. The request shall be in writing and shall identify the  
18 existing fiscal conditions that make the request necessary.

19 (2) If the local agency requests a review, any costs incurred  
20 pursuant to this section shall be borne by the local agency.

21 (c) The local agency shall make its books and records available  
22 to the Controller for this purpose.

23 (d) In conducting an audit pursuant to this section, the Controller  
24 shall provide the local agency written notification of the audit, and  
25 shall meet with the local agency officials to receive, discuss, and  
26 consider information provided by the local agency concerning the  
27 agency's financial condition.

28 (e) The Controller shall give priority consideration to conducting  
29 an audit of local agencies that meet the conditions pursuant to this  
30 section, over local agencies that only meet the conditions for a  
31 preliminary review pursuant to Section 12485.

32 (f) If an audit conducted pursuant to this section finds that one  
33 or more conditions indicative of a serious financial problem may  
34 exist within a local agency, the Controller shall provide written  
35 notification to the Governor and the Legislature within 120 days  
36 after beginning that audit.

37 12487. (a) If the Controller determines that sufficient funds  
38 are made available, the ~~controller~~ Controller shall convene a local  
39 agency financial review committee to provide assistance to local  
40 agencies that seek help in averting or managing a financial

1 problem. The committee shall meet no less than annually.  
2 Assistance provided pursuant to this section shall not include direct  
3 financial payments or loans to local agencies that are not otherwise  
4 authorized by statute.

5 (b) The committee shall be chaired by the Controller and include  
6 representatives of the office of the Treasurer and the Department  
7 of Finance.

8 (c) The Controller shall utilize the services of a consultant  
9 having extensive financial management and accounting experience  
10 with local agencies in the state, to assist in evaluating and assisting  
11 local agencies that are undergoing or facing a financial problem.

12 (d) A local agency may request assistance from the committee  
13 in meeting the ordinary needs of government operations. The  
14 request shall identify the existing financial conditions that make  
15 the request necessary.

16 (e) A local agency that is subject to a preliminary review  
17 pursuant to Section 12485, or an audit pursuant to Section 12486,  
18 shall receive priority consideration by the local agency financial  
19 review committee.

20 (f) In consultation with the local agency requesting assistance,  
21 and using any applicable data from a preliminary review or audit  
22 conducted pursuant to this article if a preliminary review or audit  
23 has occurred, the committee shall recommend a financial recovery  
24 plan for the local agency. The financial recovery plan shall consider  
25 both of the following:

26 (1) Conducting the operations of the local agency within the  
27 resources available according to the data provided by the local  
28 agency.

29 (2) The payment in full of the scheduled debt service  
30 requirements on all bonded and other indebtedness and other  
31 uncontested legal obligations of the local agency.

32 (g) The Controller shall report to the Legislature, no later than  
33 June 30, 2012, and annually thereafter, on the actions of the  
34 committee and status of all engagements with local agencies  
35 pursuant to this section.

36 12488. For purposes of this article, “local agency” means a  
37 city, county, city and county, special district, or redevelopment  
38 agency.

1       12489. This article shall remain in effect only until January 1,  
2   2017, and as of that date is repealed, unless a later enacted statute,  
3   that is enacted before January 1, 2017, deletes or extends that date.

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